

Remarks

A. *Specification*

The Office Action mailed June 3, 2009 noted the use of trademarks in the paragraph beginning at page 9, line 28, and ending at page 10, line 9. This paragraph has been amended to remove the trademark symbols from the terms TEGADERM and OPSITE FLEXIGRID.

B. *Status of the Claims*

Claims 1-11 were pending prior to the Office Action mailed June 3, 2009. Independent claims 1 and 9 are amended to recite “a generally non-porous cover coupled to the wound contactable layer.” Independent claim 8 has been amended to recite “wherein ~~approximately the entire~~ substantially all of the generally continuous planar bottom surface is directly engaged with the top surface of the wound contactable layer and cooperates with the channels extending along the top surface of the wound contactable layer to define a plurality of passageways connecting each hole with the port.” Claims 1-11 are now pending in the application.

C. *Claims 1-11 Are Definite*

Claims 1-11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action stated that independent claims 1 and 9 are “unclear/inconsistent” because the “the undermined portion of the wound covers the opening at the top surface.” Office Action at p. 3. Applicants respectfully disagree and traverse. Claim 1 recites “a *wound contactable layer* having a *bottom surface* adapted to be in contact with and generally conform to the wound surface.” Claim 1 (emphasis added). As such, “at least one discrete opening extending through a *top surface* of the *cover*, wherein the at least one discrete opening is

uncovered *at the top surface* and configured to be directly open to an undermined portion of the wound,” as recited in claim 1, is entirely consistent with “a *bottom surface* adapted to be in contact with and generally conform to the wound surface,” as also recited in claim 1 (emphasis added).

The Office Action further stated that “terminology ‘approximately the entire’ planar bottom surface” in claim 8 is “unclear/inconsistent.” Applicants respectfully disagree. Nevertheless, claim 8 has been amended to recite “wherein substantially all of the generally continuous planar bottom surface is directly engaged with the top surface of the wound contactable layer and cooperates with the channels extending along the top surface. . .,” as illustrated, for example, in FIGS. 2-5. Applicants respectfully submit that claim 8 is thus definite.

The Office Action further stated that “the portion of the top surface engaged thereby is only that between/without channels ‘along such surface’ and such portion of the top surface relative to the entire surface, i.e. including the channels, has also not been set forth. Applicants respectfully disagree and traverse. Paragraph [0021] of the present application states: “It is also within the scope of this disclosure for member 19 to include either access channels 62 or access holes 64 formed in a top surface of member 19.” As such, channels in a top surface may be distinct from the top surface (e.g., where the top surface is removed or omitted to form channels). Thus, “the top surface of the wound contactable layer,” as recited in claim 8, is definite and does not require any reference to the channels.

In view of the foregoing, independent claims 1, 8, and 9, and therefore dependent claims 2-7 and 10-11 which depend therefrom, are definite. Applicants therefore request reconsideration and withdrawal of the rejection under 35 U.S.C. § 112.

D. Claims 1-11 Are Novel

Claims 1-11 were rejected under 35 U.S.C. § 102(e) as anticipated by Risk Jr. et al. (6,755,807, hereinafter referred to as Risk ‘807), and “thereby, by incorporation,” Lockwood et al. (6,685,681, hereinafter referred to as Lockwood ‘681). Office Action at p. 4. Applicants respectfully disagree and traverse.

As the Office is aware, anticipation requires that a single reference disclose *all elements of a claim*. Neither Risk ‘807 nor Lockwood ‘681 discloses all elements of independent claims 1, 8, and 9, and therefore neither reference discloses all elements of dependent claims 2-7 and 10-11. Even if the packing 618 of Risk ‘807 (see FIG. 9) is equated to the cover recited in any of claims 1, 8, and 9, Risk ‘807 simply does not disclose that the packing 618 could have the claimed characteristics. Risk ‘807 describes packing 618 at col. 10, lines 33-37 (emphasis added).

As shown in the illustrated embodiment, side 612 of bandage member 604 faces wound 300, and side 610 faces a porous packing 618. Packing 618 provided under film 602 to assist in providing a space 616 to facilitate the negative pressure. Packing 618 is typically a gauze material.

But independent claims 1 and 9, as amended, recite “a generally non-porous cover coupled to the wound contactable layer.” Risk ‘807 explicitly discloses a porous packing, and thus does not and cannot disclose a generally non-porous packing, as recited in independent claims 1 and 9.

Independent claim 8 recites “a cover coupled to the wound contactable layer and having a generally continuous planar bottom surface” (emphasis added). FIG. 9 of Risk ‘807 shows that packing 618 does not have a generally continuous planar bottom surface. Additionally, the porous nature of packing 618 (e.g., “typically a gauze material”) explicitly disclosed by Risk

“807 necessarily precludes a “generally continuous planar bottom surface,” as recited in independent claim 8.

Relevant Portion of FIG. 9 of Risk '807

While not intended to list or describe all difference between the cited references and the pending claims, Applicants submit that, in view of at least the foregoing, neither Risk '807 nor Lockwood '681 discloses every element of the present claims. Applicants therefore respectfully request reconsideration and withdrawal of the rejection.

Conclusion

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic conference between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3083 is respectfully requested.

Respectfully submitted,



Eagle H. Robinson
Reg. No. 61,361
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201
(512) 536-4598 (facsimile)

Date: January 5, 2010